United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-7545

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MacMILLIN Co.	)	
v.	)	NO. 76-7545
IVOW CORPORATION	)	

APPELLANTS' BRIEF

PETER H. BANSE, BISHOP & CROWLEY,
27 So. Main St., Rutland, VT 05701

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE MACMILLIN CO., INC.

v.

IVOW CORPORATION & WILLIAM SZIRBIK

DOCKET NO. 76-7545

Appeal
from the

United States District Court
for the District of Vermont

APPELLANTS' BRIEF

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ATTORNEYS FOR APPELLANTS

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NOTE: "RECORD" HEREIN REFERS TO THE APPENDIX OF THIS BRIEF.

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STATEMENT OF THE CASE

This is an appeal from a judgment entered on September 24, 1976, in the United States District Court for the District of Vermont, that the Appellee, The MacMillin Co., Inc., hereinafter "MacMillin", recover of the Appellants, IVOW Corporation and William Szirbik, hereinafter "IVOW", jointly and severally, the sum of $12,500, plus interest at the legal rate from November 25, 1972, and its costs of suit (Record, p. 19), for infringement of a common-law copyright in, and conversion of, certain architectural plans and drawings.

IVOW, a Vermont corporation, is the owner of a small shopping center in Manchester Center, Vermont. (Record, p. 2). William Szirbik is its Treasurer. (Record, p. 2) MacMillin is a New Hampshire corporation engaged in the general contracting business. (Record, p. 2)

Jurisdiction is based on diversity of citizenship. (Record, p. 2).

In the Spring of 1972, MacMillin and IVOW became associated because of IVOW's desire to build an addition to its shopping center. (Record, p. 2). Preliminary discussions were had during which IVOW furnished MacMillin with its requirements, sketches, and suggestions, and MacMillin prepared preliminary drawings and estimates of cost. (Record, pp. 3,4,6).

In early September of 1972, MacMillin was desirous of obtaining some commitment from IVOW before investing further time and effort in the project. (Record, p. 4). It therefore told IVOW that it

would be willing to proceed with complete drawings and specifications if IVOW would agree to reimburse it for out-of-pocket costs, not to exceed $2,500, should the project be abandoned or MacMillin not be the eventual contractor. (Record, pp. 4,43,44). Although no specific agreement was made, IVOW did indicate its desire that MacMillin proceed with the planning of the project and did not object to the proposal. (Record, p. 5).

MacMillin, through its employee, who was trained in architectural drafting (Record, p. 2), but not registered or licensed as an architect in the State of Vermont (Record, p. 9), proceeded to develop more detailed drawings and specifications for the proposed addition. (Record, pp. 5,6). Copies of these drawings and specifications were shown to and discussed with IVOW as they progressed, and IVOW, in turn, gave copies furnished by MacMillin to present and prospective tenants and its bank, with MacMillin's knowledge and consent. (Record, p. 5).

On November 24, 1972, MacMillin delivered to IVOW its final drawings and specifications and a proposed construction contract for $166,032 (Record, p. 6, Findings, p. 7). The IVOW officers present declined to sign the contract without the approval of other shareholders (Record, p. 7).

IVOW thereupon contacted Etbro Construction Co., Inc., hereinafter "Etbro", and asked it for a price quotation for the construction work contemplated in the drawings which had been prepared by MacMillin, and gave Etbro a copy of the drawings in substantially their final form. (Record, p. 7). Etbro initially quoted $165,000, but when IVOW indicated dissatisfaction,

reduced the quote to $155,000, after obtaining price reductions from subcontractors. (Record, p. 8; Transcript, pp. 158, 159).

IVOW thereupon signed a construction contract with Etbro, (Record, p. 30) which retained a registered architect to develop final building plans for its purposes and to satisfy the banks (Record, pp. 8, 28-30; Transcript, pp. 164, 208, 209). The architect used the drawings prepared by MacMillin as the basis for the final plans (Record, p. 8).

MacMillin brought this action for common-law copyright infringement, conversion, and implied contract on November 21, 1973 (Record, p. 1, Complaint). IVOW denied liability; claimed a contract with MacMillin and that MacMillin was seeking to recover for architectural services without having complied with the statutory prerequisites. (Answer, Pre-Trial Order). No claim of statutory copyright was asserted.

The trial court, sitting without a jury, concluded that MacMillin was entitled to a common-law copyright in the plans and drawings it prepared (Record, p. 11); that no general publication had occurred (Record, p. 12); that IVOW had materially contributed to an infringement of the copyright by Etbro's architect (Record, p. 13); and that Vermont's architectural licensing statute was no bar to recovery (Record, p. 10).

The trial court further concluded that the same facts supported liability for conversion of MacMillin's property (Record, p. 13), and that the proper measure of damages was a standard architect's fee of 8% of the final contract price, plus interest from the date of the injury (Record, p. 15).

ISSUES PRESENTED

I. Under Vermont law, can one who has been requested to prepare architectural plans to meet another's desires and requirements, and in consultation with such other person, claim a common-law copyright as against that person, without establishing an agreement for reservation of such rights?

II. Under Vermont law, can an unlicensed person who has been requested to prepare architectural plans and agreed to do so for compensation, recover such compensation or the value of the plans, where the plans were also intended for his own use in constructing a building, and the client knew he was not employing a qualified and licensed architect?

III. Under Vermont law, can one who delivers personal property persuant to a sales contract recover for conversion if the purchaser fails to pay the contract price?

IV. Is there any credible evidence to support the following findings?

(a) That the reasonable value of MacMillin's plans and specifications were $12,500;

(b) That $12,500 was consistent with the understanding of MacMillin and IVOW;

(c) That $12,500 equates with the cost advantage obtained by IVOW through the use of MacMillin's plans;

(d) That design costs for a construction project compose approximately 8% of the contract price;

(e) That an architect would have charged more than $12,500 for the plans.

V. Under Vermont law, may a trial judge award interest in addition to damages for a common-law copyright infringement?

I. ONE WHO COMMISSIONS A WORK BY AN INDEPENDENT CONTRACTOR IS PRESUMED TO OWN THE COPYRIGHT AND CANNOT BE AN INFRINGER, ESPECIALLY WHERE HE HAS CONTRIBUTED TO THE WORK.

The trial court concluded that questions of common-law copyright were of first impression in Vermont (Findings, p. 14), but that, if given the opportunity, the Vermont Supreme Court would follow precedents for other jurisdictions (Findings, p. 14) and would conclude that the elements of infringement would be essentially the same as for statutory copyrights. (Record, p. 17).

The weight of authority, particularly in this Circuit, is that, in the absence of persuasive evidence of an agreement to the contrary, one who commissions another to create a work is entitled to the copyright ownership. Brattleboro Publishing Co. v. Winmill Publishing Corp., 369 F.2d 565 (2nd Cir. 1966); Electronic Publishing Co., Inc. v. Zalytron Tube Corp., 151 U.S.P.Q. 613 (S.D.N.Y. 1966), aff'd 376 F.2d 593 (2nd Cir. 1967); Yardley v. Houghton Mifflin Co., 108 F.2d 28 (2nd Cir. 1939); see Herbert Rosenthal Jewelry Corp. v. Grossbardt, 428 F.2d 551 (2nd Cir. 1970); Scherr v. Universal Match Corp., 417 F.2d 497,502 (2nd Cir. 1969)(dissenting opinion); Nimmer on Copyright, §63.

In this case the trial court found that MacMillin was led to believe that IVOW wanted it to prepare plans for an addition to its shopping center (Record, p. 3); that MacMillin expected to be compensated by IVOW for the plans it prepared (Record, p. 4); that IVOW did not object to paying actual costs up to $2,500 for the plans (Record, p. 5); that MacMillin prepared the plans only because it believed it would either build the project, and thus

recover the cost of the plans in its profit, or would be compensated by IVOW (Record, p. 5); that IVOW contributed suggestions and sketches (Record, p. 6), and that the plans were prepared to suit IVOW's wishes and requirements (Record, pp. 3,4).

In addition, there is no finding and absolutely no evidence of any agreement concerning the ownership of the plans or of the copyright therein. Indeed, the court found that copies of the plans were used and distributed by IVOW (not by MacMillin, but with its knowledge and consent) to tenants, a bank, and a surveyor (Record, p. 5), and that there were no expressed limitations on the use of the plans (Record, p. 12).

Clearly, there are no findings sufficient to rebut the foregoing presumption of ownership by IVOW. Rather, the findings support the applicability of the presumption and reinforce its weight. IVOW commissioned MacMillin to prepare the plans and agreed to pay either the actual cost up to $2,500, or award MacMillin a construction contract. It could not and should not be liable for infringing a copyright in such plans without any agreement or clear indication that MacMillin reserved the copyright therein.

Similarly, it is generally accepted that where a work is the product of joint authorship, each contributor automatically acquires an undivided ownership in the entire work. Sweet Music, Inc. v. Melrose Music Corp., 189 F. Supp. 655 (S.D. Cal., 1960); Eliscu v. T. B. Harms Co., 151 U.S.P.Q. 603 (N.Y. Sup. Ct. 1966); See Maurel v. Smith, 271 F. 211 (2nd Cir. 1921); Nimmer on Copyright §75.

One joint owner cannot be liable for copyright infringement to another joint owner. Donna v. Dodd, Mead & Co., Inc., 374 F. Supp. 429 (S.D.N.Y., 1974); See Picture Music, Inc. v. Bourne, Inc., 314 F. Supp. 640 (S.D.N.Y. 1970), aff'd on other grounds, 457 F. 2d 1213 (2nd Cir. 1972); Nimmar on Copyrights §77.

A joint labo.ing in furtherance of a preconcerted common design has always been indicative of joint authorship absent agreement to the contrary. Edward B. Marks Music .orp. v. Jerry Vogel Music Co., Inc., 140 F. 2d 266 (2nd Cir. 1944). It is not necessary that the joint authors work together physically, or in concert or even at the same time. See Shapiro Bernstein and Co. v. Jerry Vogel Music Co., Inc., 221 F. 2d 252 (2nd Cir. 1955); Edward B. Marks Music Corp. v. Jerry Vogel Music Co., Inc., supra. Neither is there any requirement that the contribution of the joint authors be equal in quantity or quality. Maurel v. Smith, 271 F. 211 (2nd Cir. 1921), Sweet Music, Inc. v. Melrose Music Corp., 189 F. Supp. 655 (S.D. Cal., 1960).

In this case, the trial court found IVOW contributed suggestions and sketches for the plans to MacMillin (Record, p. 6), and more importantly, that the plans were prepared to suit IVOW's wishes and requirements and in consultation with IVOW (Record, pp. 3,4).

In view of these findings, the trial court's implied conclusion that MacMillin was the sole author of the subject plans and specifications is clearly erroneous, and IVOW could not, as a matter of law, be a copyright infringer as to a work to which it contributed.

Not only is this good law, it is good common sense and justice. Why should MacMillin be allowed to claim exclusive rights in the plans and specifications, when they were derived in part through the efforts of IVOW? Copyrights are designed to protect original written works against appropriation by those who played no part in their creation. Copyright law has never purported to determine priority of rights among joint contributors to a written work.

II. A PERSON MAY NOT AVOID VERMONT'S ARCHITECTURAL LICENSING REQUIREMENTS BY MERE INTENTION TO USE ARCHITECTURAL PLANS FOR HIS OWN WORK RATHER THAN FOR SALE OR BY MERE DISCLOSURE OF HIS LACK OF LICENSE.

Like most states, Vermont requires that architects are registered with, and regulated by, a State Board. 26 VSA §§122, 161, 204.

The purpose of these requirements is to protect the citizens of Vermont from untrained, unqualified and unauthorized practitioners of architecture. Markus & Nocka v. Goodrich, 127 Vt. 404, 250 A.2d 739 (1969).

Contracts made in violation of the architectural registration laws are illegal and thus unenforceable. Markus & Nocka v. Goodrich, supra.

26 V.S.A. §124, however, provides that the registration laws shall not be construed to prevent "the preparation of working drawings, details and shop drawings by persons other than architects for use in connection with the execution of their work."

The trial court concluded that inasmuch as MacMillin intended to use the plans it prepared in the actual construction of the building depicted therein, there was no violation of the registration statutes (Record, p. 10).

This interpretation would not be unreasonable if MacMillin had never sought to sell the plans to IVOW. The facts found, however, were that MacMillin agreed to prepare the

plans only on the assurance that it would be compensated if it did not construct the building (Record, pp. 4, 5).

The trial court's interpretation, therefore, allows the acknowledged policy of the registration statutes to be frustrated. The court found that the plans were prepared, not by an architect (Record, p. 9), but by an architectural draftsman (Record, p. 3), and the uncontroverted evidence was that the preparer had no education in architecture, having merely studied mechanical drawing in high school and worked as a draftsman for architects (Transcript, pp. 26, 27). The court also found that the plans were intended as building plans (Record, pp. 6,11). Thus, if IVOW had paid the requested price of $2,500, a transaction would have occurred which was directly contrary to the acknowledged purposes and policy of Vermont law - a citizen of Vermont would have been sold architectural building plans by a person untrained, unqualified, and unauthorized to practice architecture.

The trial court also appeared to rely on the fact that IVOW knew that MacMillin's employee who prepared the plans was not an architect and was not registered as such in Vermont (Record, p. 10).

The policy of the registration statutes, however, is not simply to prevent deception of the public, although this is included. The policy is also to prevent the unauthorized practice of architecture. Markus & Nocka v. Goodrich, supra.

It would not be seriously argued that a non-lawyer might enforce a contract for legal services rendered as long as he informed his client that he was not a lawyer.

Neither would it be seriously argued that an unlicensed, unqualified individual could enforce a contract for medical services rendered, as long as he informed his patient that he was not a licensed physician.

To allow mere lack of false representations to enable enforcement of such contracts would obviously frustrate the statutory policy and purpose.

The statutes in question are not designed merely to confer a right on citizens to avoid specified contracts, which right they might waive or be estopped to assert. They are designed primarily to foster a public policy requiring registration and regulation of persons who purport to design and plan buildings for others. It is well settled that where a statute is designed to protect the general welfare under a sovereign's police powers, no citizen is allowed to frustrate the statute by agreement or waiver. Bowerstock v. Smith, 243 U.S. 29; Grandview Inland Fruit Co. v. Hartford Fire Insurance Co., 66 P.2d 827 (Wash.); 17 Am. Jr. 2d Contracts, §173.

Thus, it should be the nature of the services performed, rather than merely the representations which were made, which should determine the enforceability of MacMillin's claims. If it was in fact performing architectural services

without licenses, it should be barred from recovery, even if it so informed IVOW. Wedgewood v. Jorgens, 157 N.W. 360 (Mich.). The bar should apply regardless of the theory upon which recovery is sought, i.e. whether it be conversion, contract or quantum meruit. Hedlan v. McCool, 476 F.2d 1223 (9th Cir. 1973); Dalton, Dalton, Little, Inc. v. Merandi, 412 F. Supp. 1001, 1007 (1976, D.N.J.); Cameron v. State, 548 P.2d 555, 557 (1976, Wash. App.); Central Coast Construction v. Nel Laundry Service Corp., 551 P.2d 1294 (1976, Ore.); Farmer v. Farmer, 528 S.W.2d 539 (1975, Tenn.); Bathroom Designs Institute v. Parker, 317 A.2d 526 (1974, D.C. Supp.)

The findings and uncontroverted evidence in this case clearly show that MacMillin was performing architectural services. It was designing a building to suit IVOW's wishes and requirements (Record, pp. 2, 3, 4). It was developing plans adequate for use in construction (Record, p. 6). It claimed unique and original solutions to complex design problems (Record, p. 6). It claimed damages for copyright infringement based on standard architect's fees (Record, p. 15). In attempting to enforce a contract to recover for these services, it is seeking to ignore the statutory policy of Vermont law. The trial court was clearly in error in holding that it should be allowed to do so.

III IVOW WAS A PURCHASER, NOT A CONVERTER, OF THE MACMILLIN PLANS.

The trial court found that in early September of 1972, MacMillin told IVOW that it would prepare drawings and specifications, if IVOW agreed to pay MacMillin's out-of-pocket costs, up to $2,500, should the project be abandoned or MacMillin not obtain the construction contract, but if MacMillin obtained the construction contract, the cost of the plans would be included in the overall fee. (Record, pp. 4, 5).

The trial court also found that IVOW assented to this arrangement, (Record, p. 5), and that MacMillin prepared and delivered the agreed-upon plans and drawings to IVOW (Record, pp. 5-7).

These findings are clearly inconsistent with any conclusion that IVOW "converted" MacMillin's property to its own use. The only conclusion they support is that MacMillin delivered the plans to IVOW in performance of its agreement.

As the trial court pointed out, (Record, p.13), "conversion" is the appropriation of another's property to one's own use, or the exercising of dominion over it to the exclusion of the owner's rights.

In this case, however, the court found that possession and title to the plans were voluntarily transferred to IVOW (Record, pp. 5, 6, 7). IVOW's obligation at the time of transfer was to either enter into a construction contract with MacMillin, or pay for the plans, up to $2,500. Having sold and delivered the

plans, without reservation of any security interest therein, MacMillin's remedies were those set forth in 9A V.S.A. §2-709.

It is axiomatic that to recover for conversion, the plaintiff must establish either ownership or right to possession of the property at the time of the alleged conversion. Campbell v. Bryant, 98 Vt. 486, 129 A. 299 (1925). Thus a vendor cannot sue for conversion after title has passed. Hayden, Stone, Inc. v. Broole, 508 F. 2d 895 (7th Cir. 1974); Desbien v. Penokee Farmers Union Cooperative Association, 552 P. 2d 917, 924 (Kan. 1976).

Simply stated, a breach of contract will not generally support an action for conversion. Worley v. Sancetta, 540 P. 2d 355, 357 (Colo. App. 1975).

The trial court's reliance on Vermont Acceptance Corp. v. Wiltshire, 103 Vt. 219, 153 A. 199 (1931), might be appropriate if the facts found had established a conditional sale or a bailor-bailee situation. Under the findings, however, the court could only have concluded that the plans had been delivered pursuant to the agreement of the parties, which was essentially a sale. The court found that upon delivery of the plans to IVOW, MacMillin's employee was satisfied that a construction contract would be signed. (Record, p. 7). There is no evidence, or finding, whatsoever, that MacMillin and IVOW had by this time modified their agreement in any way. Thus the court's apparent imputation of a different intent in the delivery of the plans is without foundation.

IV. THE DAMAGES FOUND WERE CLEARLY EXCESSIVE.

Under any theory of liability, the damages found by the trial court were clearly excessive.

Assuming, as the trial court concluded, that IVOW was liable as a related or contributing copyright infringer, the accepted measure of damages would be value of the plans at the time of the infringement. Szekely v. Eagle Lion Films, Inc., 140 F. Supp. 843 (S.D.N.Y. 1956), aff'd 242 F.2d 266 (2nd Cir., 1957), or, as an alternative, an equitable accounting for the profits derived from the infringement. Szekely, supra; Smith v. Little Brown & Co., 273 F. Supp. 870 (S.D.N.Y. 1967), aff'd. 396 F.2d 150 (2nd Cir., 1968).

In this case, MacMillin's sole expert witness placed the reasonable value of the plans at $10,000-$12,000, based on customary architects' fees. (Record, p. 36). MacMillin's Treasurer and only officer at the trial valued the plans at $10,000 (Record, pp. 37,48). Thus, the court's award exceeded even the claims of MacMillin's witnesses.

The trial court apparently based its award on a finding that design costs in the construction industry normally compose approximately 8% of the final contract price, and using $155,000 as the final contract price, arrived at $12,500 as a reasonable design cost. (Record, p. 15). The foregoing was apparently based, in part, on a finding that MacMillin included 8% in its construction fee for design

costs. (Record, pp. 15,18,43,44). This finding was clearly erroneous. Plaintiff's Exhibit 3, (Record, pp. 43, 44). Clearly, states that it is the total construction fee which is 8%, and this includes design costs.

The expert testimony to which the court refers was to the effect that a standard architect's fee is 8 to 9-1/2% of the contract price, (Record, pp. 36-38), but that this figure includes not only design, but also bidding and construction supervision, and pure design work would only entitle an architect to not more than 75% of this fee. (Record,pp. 36,37).

Thus, even if the plans in question here had been prepared by a registered architect, the fee would have been between 6% and 7% of the contract price, or between $9,300 and $10,850. The facts found, however, were that the plans were not prepared by a registered architect, but by an architectural draftsman, (Record, p. 3), and although suitable for MacMillin's purposes, (Record, p. 6), had to be redrawn and supplemented by a registered architect, at an additional cost of $3,000, before they were usable by IVOW's contractor and acceptable to IVOW's financiers. (Record, p. 8).

The trial court further justified its finding of damages by finding that $12,500 "equates" with the cost advantage obtained by IVOW through use of the plans. (Record, p. 9). The only evidence to support this finding was testimony that MacMillin offered to construct the project for $166,000 but the final contract price paid by IVOW was $155,000, or a difference of $11,000. (Record, p. 8; Findings, p. 7). There was absolutely no evidence

however, that the difference was in any way attributable to the use of the MacMillin plans. In fact, the findings were that the plans merely saved time (Record, p. 8), and Etbro's original price was $165,000, and was reduced to $155,000 only after sub-contractors agreed to reduce their prices (Record, p. 8).

The trial court further attempted to support its award by reference to its findings that the MacMillin plans enabled IVOW to obtain a speedy bid from Etbro; to obtain final building plans from Crandell Associates without delay; to obtain a building permit easily; and to commence construction without delay (Record pp. 14, 15). The uncontroverted evidence, however, was that Etbro was told not to plan for early construction, and, in fact, construction was not commenced until summer of 1973 (Transcript, pp. 167, 168; Findings, p. 10). There was no evidence that this date was sooner than would have been possible if the MacMillin plans had not been used. Neither was there any attempt at the trial by any witness, nor in the findings, to translate the alleged convenience and speed into monetary terms.

IVOW's evidence, which was ignored by the court, was that the reasonable value of the services of an architectural draftsman was $4.75 per hour and the maximum number of hours that would have been required for the MacMillin plans was approximately 200 (Record, pp. 39, 40, 41, 42), or a reasonable cost of approximately $950. One IVOW expert valued the

plans at $1,500 (Record, p. 39), and another at $800 (Transcript, pp. 526, 527). Mr. Ettori of Etbro said they would have cost him about $1,000 (Record, p. 34).

It seems clear, therefore, that the trial court's award of $12,500 under its theory of copyright infringement was without any fair and credible support in the evidence and was clearly excessive.

Even under a conversion theory, the award would still be excessive, inasmuch as damages for conversion are generally measured by the value of the property converted at the time of the conversion, plus interest. Redd Distributing Co. v. Bruckner, 128 Vt. 635, 270 A.2d 580 (1970); Thrall v. Lathrop, 30 Vt. 307 (1859). Furthermore, the value of the use of the property by the wrongdoer is not ordinarily a proper consideration in determining damages for conversion, nor is the value of any intangible ideas expressed in the property. See State v. State Journal Co., 75 Neb. 275, 106 N.W. 434.

In addition, the trial court improperly added prejudgment interest to its damage award for copyright infringement. In Vermont, the rule is that while lapse of time may be considered by a trier of fact in determining suitable compensatory damages for tortious injuries, interest, as such, may not be added to the damages before judgment. Wells v. Village of Orleans, 132 Vt. 216, 315 A.2d 463 (1974). This is consistent with the general rule that a party should not be compelled to pay interest on an unliquidated claim, i.e. one where the amount due cannot

be accurately determined at any point in time before judgment. See Am. Jur. 2d Damages §§ 179-81. In this case the trial court made it clear that it considered several factors in determining damages, including the value of IVOW's use of the plans (Record, pp. 8, 9, 14, 15). Clearly, the amount due MacMillin at any point in time was incapable of accurate computation or determination without an agreement by the parties or a court judgment. It is therefore unjust to compel IVOW to pay retroactive interest on the amount ultimately found to be due.

CONCLUSION

IVOW is not liable for copyright infringement because of its presumed ownership of the copyright. It is not liable for conversion, inasmuch as the plans were sold and delivered to it. It is not liable for breach of contract, expressed or implied, because the contract was illegal and thus unenforceable under the laws of Vermont.

Inasmuch as the facts found do not support liability on any theory, the judgment of the trial court should be reversed, and judgment entered dismissing the complaint with prejudice and awarding IVOW its costs.

ADDENDUM

26 VSA §122. Penalties generally

Any person who shall hold himself out as an architect or a registered architect, without being duly registered under this chapter, or any person presenting or attempting to use his own the certificate or seal of another, or any person who shall use his own seal on drawings prepared by others not in his direct employ, or any person who shall falsely impersonate any other registrant or like or different name, or use or attempt to use a certificate that has been revoked or has expired, or give false or forged evidence to the board or any member thereof in obtaining a certificate of registration, or otherwise violate any of the provisions of this chapter shall be fined not less than $100.00 nor more than $500.00, or be imprisoned for not more than three months, or both.

26 VSA §124. Construction

This chapter shall not be construed to affect or prevent the practice of engineering by a professional engineer duly licensed under the laws of this state, nor to apply to any person licensed as a professional engineer in this state except that such persons shall not use the designation architect, architectural, or architecture unless licensed under the provisions of this chapter; nor to prevent the preparation of working drawings, details and shop drawings by persons other than architects for use in connection with the execution of their work; nor to prevent employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers; nor to apply to the supervision by builders or superintendents employed by such builders, of the construction or structural alteration of buildings or structures; all provided, however, that nothing herein contained shall be construed to permit any person not licensed as provided in this chapter to use the title architect, or any title, sign, card, or device to indicate that such person is an architect.

9A VSA §2-709. Action for the price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a comercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (§2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

THE MacMILLIN CO., INC. Plaintiff-Appellee	*	CIVIL APPEAL
v.	*	DOCKET NO. 76-7545
IVOW CORPORATION and WILLIAM SZIRBIK, Defendants-Appellants	*	CERTIFICATE OF SERVICE

I hereby certify that on the day of February, 1977, I served the Appellants' Brief herein, and a proposed joint Appendix on all counsel of record by depositing two copies of same in the United States Mail, postage prepaid and addressed as follows:

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